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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re J.B. et al., Persons Coming Under the  
Juvenile Court Law.

B175380  
(Los Angeles County  
Super. Ct. No. CK45732)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

S.E.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County.

Thomas E. Grodin, Judge. Juvenile Court Referee. Dismissed.

Lori A. Fields, under appointment by the Court of Appeal, for Defendant and Appellant.

Raymond Fortner, County Counsel, Larry Cory, Assistant County Counsel, and Frank DaVanzo, Deputy County Counsel, for Plaintiff and Respondent.

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S.E. (mother), the mother of J.B. (minor 1) and K.B. (minor 2) (collectively the minors), appeals the order denying her request to have the minors transported from the state of Missouri to Los Angeles so that they can appear and testify at a permanent plan hearing. Subsequent to the filing of this appeal, however, the permanent plan hearing was conducted, the minors testified by telephone, and mother's parental rights were terminated. She did not appeal the order terminating her parental rights. Though mother acknowledges that her appeal is now moot, she asks that we grant discretionary review of the challenged order on the grounds that the issue presented is one of continuing public importance yet evading review. Mother's request is hereby denied and her appeal is dismissed because it is no longer justiciable.

### **FACTS**

Minor 1 was born in February 1991 and minor 2 was born in February 1993. In 1997, their maternal grandmother (grandmother) filed a petition to gain legal custody of the minors, alleging that mother and their father both abused drugs and alcohol and were not fit to care for children. At the time, father had physical custody of the minors and was dating S.H. He often left the minors in the care of S.H.'s parents, W.H. and C.H. (the H.s). When the H.s petitioned for legal guardianship, grandmother dismissed her own petition. In 1998, the H.s' petition was granted and they were given legal guardianship of the minors.

In June 2001, the Department of Children and Family Services (Department) detained the minors based on allegations that the H.s physically abused them and that W.H. sexually abused minor 1.

Mother and the minors' grandmother were living in Missouri at the time. They traveled to the detention hearing on July 2, 2001, and were granted reasonable monitored visitation. The Department filed an amended petition under section 300 of the Welfare

and Institutions Code<sup>1</sup> alleging, in part, that mother has a history of using drugs and alcohol and was incapable of providing regular care for the minors. When the Department's section 300 petition was sustained, the juvenile court ordered reunification services. Mother was ordered to attend a substance abuse program, parent education, individual counseling, and conjoint counseling with the minors.

The minors stated that they wished to move to Missouri and live with grandmother. As a result, they were placed with grandmother.

By the six-month review, mother was residing in Missouri, visiting the minors every day, and attending her programs. For the 12-month review, a Missouri social worker reported that mother saw the minors every day and had unsupervised visits. The social worker recommended that the minors be returned to mother's care. According to the minors' therapist, they wanted to make up for lost time with mother.

A new home study for mother was ordered.

In the report for the 18-month review, the juvenile court was informed that the minors wanted to be with mother and the Department recommended placement of the minors with mother. However, subsequently, a Missouri social worker reported that mother was once again using illegal substances, she was missing visits with the minors, she was unpredictable, and she had missed a drug test. The Missouri social worker recommended that grandmother be given legal guardianship because the minors needed a stable home. As a result, the Department changed its position and recommended that reunification services be terminated and that a permanent plan hearing be set.

The juvenile court followed the recommendation and set a permanent plan hearing for October 8, 2003. By September 2003, mother had been arrested for being involved with a methamphetamine lab. She was out on bail but had not been sentenced. The section 366.26 report indicated that the family was wavering between legal guardianship

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<sup>1</sup> All further references are to the Welfare and Institutions Code unless otherwise indicated.

and adoption. Grandmother was willing to move forward with adoption, but the minors had questions. Still, the family eventually said it wanted to move forward with adoption.

The section 366.26 hearing was continued several times. In an interim report, the Department indicated that minor 1 said she was still not sure about adoption. Minor 2 stated that she thought adoption would be okay. The Department's supplemental report for the March 18, 2004 hearing stated that both minors still had questions but wanted to be adopted. The matter was then set for a contest, at which point mother's counsel requested that the minors be transported to California to testify. That request was debated on April 9, 2004. Mother's counsel indicated that she wanted to establish the exception to the termination of parental rights set forth in section 366.26, subdivision (c)(1)(A) and that, as a result, it was imperative that the minors be present to testify given their contradictory statements about their desire to be adopted. A few days later the juvenile court ruled. It stated that under section 366.26, subdivision (h)(2), it was required to determine whether children 10 years of age or older had been notified of their right to appear and inquire as to why they were not present. The juvenile court noted that minor 1, through her attorney, indicated that she did not want to attend the hearing or travel to California. Minor 2 stated that she would not mind coming to California because she wanted to go to the beach. As a result, the juvenile court found that it lacked good reason to compel the minors to attend. The juvenile court stated that the minors could be questioned via telephone if necessary.

On May 18, 2004, mother appealed the juvenile court's order denying her request to compel the minors to appear and testify.

The permanent plan hearing was held on September 7, 2004, and the testimony of the minors was taken over the telephone. After the parties argued, the juvenile court terminated parental rights and found by clear and convincing evidence that the minors were adoptable.

## DISCUSSION

“As a general rule, appellate courts decide only actual controversies. Thus, ‘it has been said that an action which originally was based upon a justiciable controversy cannot be maintained on appeal if the questions raised therein have become moot by subsequent acts or events.’ [Citation.]” (*In re Christina A.* (2001) 91 Cal.App.4th 1153, 1158.)

When a parent does not appeal an order terminating parental rights, prior juvenile court errors are rendered moot. (See *In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1315-1317 [mother’s appeal from the denial of a hearing on a section 388 petition was moot because she did not appeal the subsequent order terminating her parental rights and a reversal would have been futile].)

Applying these principles, we can only conclude that this appeal does not present a justiciable controversy. Mother did not challenge the termination of her parental rights and the opportunity to prove the exception set forth in section 366.26, subdivision (c)(1)(A) has passed her by. Therefore, reversing the challenged order would be a futile act and this appeal is moot.

Despite the foregoing, mother urges us to engage in discretionary review. (See *In re Christina A.*, *supra*, 91 Cal.App.4th at p. 1158 [a moot issue can be reviewed if it is one of continuing public importance and is capable of repetition but will evade review].) We decline. According to mother, “the issue of whether [the] minors should be available to testify in person under the circumstances presented in this case is one of continuing public importance.” Why this is so, mother does not say. It bears reminding mother that it “is not our responsibility to develop an appellant’s argument.” (*Alvarez v. Jacmar Pacific Pizza Corp.* (2002) 100 Cal.App.4th 1190, 1206, fn. 11.) In any event, this issue is subject to case-by-case review for an abuse of discretion (*In re Leo M.* (1993) 19 Cal.App.4th 1583, 1592) and the facts in this case, as with any dependency case, are unique. We fail to see how the exercise of discretion with respect to these unique facts is an issue of continuing public importance, or why it is capable of repetition. Moreover, mother does not explain why we would be barred from reviewing the issue if she had

appealed the termination of her parental rights. In other words, she has not shown that this issue is one that evades review.

**DISPOSITION**

The appeal is dismissed.

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\_\_\_\_\_, J.  
ASHMANN-GERST

We concur:

\_\_\_\_\_, Acting P.J.  
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\_\_\_\_\_, J.  
DOI TODD